

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 361 of 1982
in
SPECIAL CIVIL APPLICATIONNO 485 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

KUMARI HINA K VAIDYA

Versus

GARANA HARSHUKH VIRDAS

Appearance:

1. LETTERS PATENT APPEAL No. 361 of 1982

MR PV HATHI for Appellant

NOTICE SERVED for Respondent No. 1, 9

MR PM RAVAL for Respondent No. 2

MR KM PATEL for Respondent No. 5

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 18/12/98

ORAL JUDGEMENT : (Per C.K. Buch, J.)

Feeling aggrieved by the judgment and order passed by the learned Single Judge in Special Civil Application No.485 of 1981, original respondent no.5 has preferred this Letters Patent Appeal. At the initiation of the submission, the learned counsel appearing for the appellant has submitted that by the order under challenge, the appointment of three persons were set aside and the remaining two have preferred another appeal bearing Letters Patent Appeal No.360 of 1982, which is pending with this court. Without going into the details of that Letters Patent Appeal, we are inclined to deal with the present (listed) Letters Patent Appeal.

2. Respondent no.1 (original petitioner) Garana Harshukh Virdas, challenged the appointment mainly of opponent no.7, who was appointed by respondent no.2 Municipality, as Field Assistant in High School, known as "Vivekananada Vinay Mandir", run by respondent no.2. At the time of pointing out the irregularity and illegality in the procedure for appointment followed by the Municipality, the petitioner has narrated the entire recruitment procedure and method adopted for recruitment. The learned Single Judge though has not passed any favourable order, as prayed for by the petitioner, because at the time of deciding the matter, the learned Single Judge has held that no irregularity or illegality has been committed so far as the appointment of opponent no.7 is concerned, who was selected against item no.4, reflected in the advertisement produced with the Special Civil Application. But the learned Single Judge, inter alia, observed and decided that there is favouritism and apparent error so far as appointment of respondents nos.5, 6 and 8 are concerned. Therefore, their appointments were set aside. Without going into the merits as to whether, though the petitioner had not prayed for any relief against appointment of respondents nos.5, 6 and 8, the finding of the learned Single Judge can be said to be a warranted decision is the question. On certain facts, which are brought on record by the appellant by producing some documents, this appeal can be decided of its own.

3. Today, the learned counsel appearing for the appellant has produced a further affidavit of the appellant, wherein she has stated that after appointment on 2nd July 1980 as Assistant Teacher by respondent no.2 - Junagadh Municipality in Narsinh Vidya Mandir, Junagadh, one of its school, she was confirmed by the Municipality in the year 1984 by Resolution bearing No.1038 dated 9.3.1984. She was confirmed from the date

of her appointment. Thereafter, on her own request she was transferred to G.L. Gandhi Vidya Mandir, Rajkot, under the orders of the District Education Officer dated 31.5.1996. The order transferring the appellant was approved by the District Education Officer, Rajkot vide order dated 17th June 1996. This clearly shows that pending this litigation, the appellant has served for several years and now rendering services in a school which had no voice in her selection. It is stated in the memo of appeal that when she was served with the notice of the Special Civil Application No.465 of 1981, she was bona fide under the belief that Junagadh Nagarpalika (opponent no.2) will defend the case on merits. Therefore, only she had not filed any affidavit in reply, nor resisted the petitioner. It is also pointed out by the learned counsel appearing for the appellant that the appointments of appellant and other teachers were challenged by one Mr. K.B. Dhabor by filing Special Civil Application No.2976 of 1980. In that Special Civil Application several allegations, which are made in Special Civil Application No.485 of 1981 were also made. That petition was resisted and the affidavit of the father of the appellant, Kaushikrai J. Vaidya was also filed. A copy of the affidavit in reply filed in that Special Civil Application is produced at page 8 of the Letters Patent Appeal. Learned advocate, Shri Hathi has pointed out that it was the say of the appellant and the father of the appellant, who was incidentally Principal of the School where she was appointed from the beginning that respondent no.4, Kaushikrai J. Vaidya was not a member of the Selection Committee nor he was present at the time when the appellant was interviewed. Before the learned Single Judge, the above referred Special Civil Application filed by Mr. K.B. Dabhor was withdrawn. Merely because the Municipality has not clarified this contingency at the time of hearing of the Special Civil Application No.485 of 1981 this decision under challenge came to be pronounced.

4. There was stay as to operation of the order passed by learned Single Judge, by this Court and appellant continued with her job. On going through the affidavit filed by Mr.Kaushikrai J. Vaidya and the stand taken by the Municipality viz - a viz. ground mentioned in the memo of appeal, which are reflected in para 3(E) and the other grounds in that very para, it is clear that an independent committee including the representative of the Education Officer and one outside expert were members of the Selection Committee. It seems that as the learned Single Judge was not apprised with the details by filing affidavit in reply nor proper assistance was given, and

the order came to be pronounced. Looking to the time spent and as the appellant is serving in another school as she is transferred in the year 1996, any adverse finding may go to the stability of her job, these facts should be given due weightage. If the version of the appellant and the Municipality is considered, then it can be concluded that there was no patent illegality in the formation of the Selection Committee and the procedure adopted for appointment by the Municipality/ respondent Nagarpalika. The learned counsel appearing for supporting respondents nos.6 and 8, Mr.K.M. Patel has supported the case of the appellant and has pointed out that even the learned Single Judge has observed at the time of confirming appointment of opponent no.7 as Field Assistant that no patent illegality is committed in the procedure. But the learned Single Judge has found favouritism in favour of the appellant and respondents nos.6 and 7. If the element of favouritism, in view of clarification made by the Municipality and the facts now available on record, is found absent, then the finding of the learned Single Judge could be set aside. It is important to note that the petitioner, in the Special Civil Application preferred by him, has hammered about the propriety and validity of appointment of respondent no.7 only. On going through the relief which is reflected in para 16 of the Special Civil Application, though the petitioner has prayed for any further or better relief, had prayed to quash and set aside the appointment of respondent no.7, namely, Jayendra Khira. For that relief the petitioner has remained unsuccessful even according to the learned Single Judge. Bearing in mind this important fact, we are inclined to allow this appeal.

5. Before departing with this order, we are inclined to observe that because of the stay granted by the Division Bench, at the time of admitting the Letters Patent Appeal, the appellant and respondents nos.6 and 8 were appointed by respondent/ Municipality and have served for these many years. So it would be in fitness of things that the situation created on the day on which appeal was admitted should continue and hence the following order is passed.

6. The Appeal is allowed. Special Civil Application No.485 of 1981 is dismissed so far as the order affecting the appointment of the appellant is concerned. We are not inclined to award any costs. So no costs.

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